

# City of Cincinnati



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Department of Safety  
Division of Telecommunications  
Office of Cable Communications

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William M. Gustavson  
Director of Safety

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Paula A. Knecht  
Superintendent

February 10, 1993

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

FEB 17 1993  
FCC MAIL ROOM

Dear Ms. Searcy:

The enclosed comments are being filed for MM Docket No. 92-266, Rate Regulation. We have enclosed an original, four copies, plus five additional copies of our comments for distribution to each FCC Commissioner. These comments are being filed by the city of Cincinnati, Ohio.

Thank you for your time and attention to this matter.

Sincerely,

David A. Chapman  
Assistant Superintendent

DAC:kms

enclosure

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARYBefore the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )Implementation of Sections of )  
the Cable Television Consumer )  
Protection and Competition Act )  
of 1992 )Rate Regulation )  

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MM Docket No. 92-266

FILED

TO: The Commission

REPLY COMMENTS OF CITY OF CINCINNATI, OHIO

The City of Cincinnati hereby submits these reply comments in the above-captioned proceeding. The Federal Communications Commission ("FCC" or "Commission") seeks comments on proposed rules to implement Sections 623, 612, and 622(c) of the Communications Act of 1934, as amended by Sections 3, 9, and 14 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").

The City of Cincinnati strongly supports comments filed by the National Association of Telecommunications Officers and Advisors, the National League of Cities, the United States Conference of Mayors, and the National Association of Counties (collectively, the "Local Governments") in this proceeding. The City of Cincinnati agrees with the Local Governments that the main goal of the Commission in

implementing the above provisions in the 1992 Cable Act is to ensure that "consumer interests are protected in the receipt of cable service". Section 2(b)(4), 1992 Cable Act. The Commission should adopt regulations implementing Sections 623, 612, and 622(c) that enable Local Governments to work cooperatively with the Commission to ensure that cable subscribers receive the protections intended by the 1992 Cable Act. Such regulations should "seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission." Section 623(b)(2)(A).

Among other comments and proposals by the Local Governments, the City of Cincinnati supports the following comments or proposals:

1. Current cable rates must be reduced if necessary to ensure that they are "reasonable", as required by Section 623.
2. The Commission should permit local governments flexibility in establishing procedures and regulations for reviewing local basic cable rates, so long as such procedures and regulations are not irreconcilable with the certification requirements in Section 623(a)(3).

3. Section 623(b)(1) authorizes the Commission to regulate basic cable rates in franchise areas that are not certified to regulate rates. At a minimum, the Commission should regulate rates in situations where a franchising authority requests the Commission to regulate rates.
4. In order to reduce administrative burdens on the Commission, the Commission should permit franchising authorities to initially review complaints that the rates for cable programming services are unreasonable under Section 623(c).
5. Given Congress' presumption that most cable operators are not subject to effective competition, the burden should be on cable operators to demonstrate that they are subject to effective competition. Franchising authorities should not bear the burden of demonstrating that cable operators are not subject to effective competition as a condition of certification to regulate rates.
6. Section 623 preempts any state law that prohibits cable rate regulation, and franchising authorities may certify that they have the "legal authority" to regulate rates pursuant to home rule charters, their police powers, their right to

regulate rights-of-way, or any other state or local provision which grants a franchising authority the right to regulate a cable system. In addition, Section 623(a)(2)(A) provides franchising authorities an independent source of power to regulate rates, regardless of any contrary state law provision. A franchising authority's right to regulate rates under Section 623 also includes the right to order rate reductions if necessary to ensure that a cable operator receives only a "reasonable" rate for basic cable service.

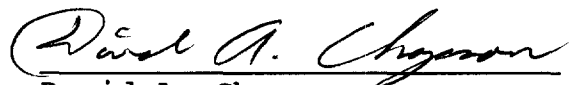
7. The Commission should establish a "benchmark", rather than a "cost-of-service", model for regulating the rates for basic cable service and cable programming services. Such a method of regulation is consistent with Congress' desire that the Commission create a formula that is uncomplicated to implement, administer and enforce.
8. The rate for any installation and equipment used to receive basic cable service, regardless of whether such installation or equipment is also used to receive any other programming service, should be based on "actual cost" pursuant to Section 623(b)(3) -- thus subject to regulation by the Commission pursuant to Section 623(c).

9. The City of Cincinnati agrees with the Commission's conclusion that certification should be pursuant to a standardized and simple certification form similar to that located at Appendix D to the Notice of Proposed Rulemaking, but such form should be modified to eliminate the burden on local governments to demonstrate that a cable operator is not subject to effective competition.
10. The Commission's rules implementing the subscriber bill itemization provision, Section 622(c), should allow a cable operator to itemize only direct costs attributable to franchise fees, PEG requirements or other assessments, and should require a cable operator that chooses to itemize costs to disclose other costs to the public reflected in the bill, such as a cable operator's profit, payments on a cable operator's debt service, or any other items a franchising authority believes are appropriate to itemize in order to accurately reflect the costs in a subscriber's bill. In calculating franchise costs pursuant to Section 623(b)(4) that a cable operator may itemize on his bill pursuant to Section 622(c), the Commission should make clear that such franchise costs are limited only to costs directly attributable to public, educational and governmental access requirements in a franchise.

11. The Commission should permit franchising authorities that wish to do so to mediate leased access disputes, and to enforce the Commission's leased access rules. Such local enforcement would be in addition to the right of franchising agreements regarding the placement and use of leased access channels.

The City of Cincinnati urges the Commission to adopt the above proposals and the other proposals raised in the Local Governments' comments.

Respectfully submitted,



David A. Chapman  
Assistant Superintendent  
City of Cincinnati  
Safety Department  
Telecommunications Division  
1430 Martin Drive  
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February 11, 1993